IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4928 OF 2005

Tushar Ramdas Jagtap ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.V.V.Purwant for the Applicant
Mr.A.S.Gadkari, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 12,2005

P.C.:

1. Heard Advocate for the Applicant. The offence alleged against the Applicant is under Sections 328, 376, 406 of I.P.C. The prosecutrix is 29 years old widow having two children having age of 12 years and 10 years respectively. The learned Advocate for the Applicant submitted that the F.I.R. has been lodged belatedly after lapse of about 2 years. He submitted that on plain reading of the F.I.R. it is clear that it is a clear case of the consent by the prosecutrix.

2. The learned A.P.P. has invited my attention to the alleged Affidavit of the prosecutrix which was filed on 7th June 2005. By relying upon the supplementary statement of the prosecutrix recorded on 14th June 2005, the learned A.P.P. submitted that a clear attempt has been made by the Applicant to tamper with the prosecution evidence. He submitted that in view of the conduct of the Applicant he cannot be enlarged on

bail.

3. I have considered the rival submissions. From the perusal of the F.I.R. and the supplementary statement it is clear that the age of the prosecutrix is 29 years. The allegations of the prosecutrix show that about 2 years prior to the filing of the F.I.R., the Applicant mixed intoxicants in a cold drink which was offered to the prosecutrix and after the prosecutrix become unconscious, the Applicant had forcible sexual intercourse with the prosecutrix. However, the F.I.R. discloses that thereafter the prosecutrix continued to have relationship with the applicant for a long period at various places such as Khadakvasala, Sinhagad, Mahabaleshwar, Uttamnagar, Shivapur, Alephata, Shikapur which are named in the F.I.R. It is stated in the F.I.R. that the prosecutrix underwent an abortion. The allegation of the prosecutrix is that the Applicant committed breach of promise given to the prosecutrix to marry with her.

4. Considering long delay in filing the F.I.R., there is some substance in the submission of the Advocate appearing for the Applicant that it is a clear case of consent. Investigation is admittedly completed. The Applicant is in custody from 6th June 2005. Looking to the allegation made in the F.I.R. the Applicant deserves to be enlarged on bail. As far as the allegation regarding tampering of prosecution evidence is

concerned, it is alleged that at the instance of the Applicant, an Affidavit of the prosecutrix was filed in the Court of Magistrate and in the supplimentary statement of the prosecutrix recorded thereafter, she has reiterated whatever is stated in the F.I.R. It is pertinent to note that in the supplimentary statement the prosecutrix has not stated that the Affidavit is not signed by her or that the Applicant has procured the Affidavit from her. For ensuring that the Applicant shall not tamper with the evidence and will not threaten the prosecutrix, stringent conditions can be imposed.

5. Hence I pass the following order :

i) The Applicant shall be enlarged on bail in connection with C.R.No.148 of 2005 registered with Khadak South Police Station, subject to furnishing a personal bond of Rs.15,000/- (Rupees fifteen thousand only) with one or two sureties in the like amount.

ii) The Bail is granted subject to the condition that till the conclusion of the trial the Applicant shall not enter the area falling within the jurisdiction of the Commissionarate of Police, Pune except for attending to the dates fixed in the case.

iii)The Bail is granted subject to condition that the

Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iv) This order will be given effect to only after the Applicant furnishes to the Investigating Officer the address of his place of residence where he proposes to stay after he is enlarged on bail.

v) After the Applicant is enlarged on bail the Applicant will report to the concerned local police station once in a week.

vi) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

vii) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

viii) Application is disposed of in above terms.

. The parties to act upon an authenticated copy of this order.

JUDGE